

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT

UNITED STATES OF AMERICA

v.

No. 2:16-CR-94

BRIAN FOLKS

DEFENDANT'S MOTION TO CONTINUE SENTENCING

Defendant Brian Folks moves to continue the sentencing hearing in this case by 60 days. Currently, sentencing is scheduled for February 3, 2019. Mr. Folks needs additional time to review the draft Presentence Investigation Report ("PSR") and to consult with counsel regarding objections to the draft PSR; objections to the additional enhancements that the Government seeks to have included in the draft PSR; and sentencing issues, including preparation of a sentencing memorandum.

The parties received the draft PSR on January 2, 2020, and they were asked to submit comments to it by January 16, 2020. To that end, on Friday January 3, 2020, the defense team hired an investigator to take the draft PSR to Mr. Folks so that Mr. Folks could begin reviewing it. The investigator spent approximately 3 hours with Mr. Folks as he reviewed it. On Sunday January 5, 2020, defense counsel spent three hours with Mr. Folks reviewing the draft PSR and discussing objections and comments to it. Mr. Folks had an additional meeting with defense counsel on Thursday January 9, 2020, but he still feels that he needs more time to review the draft. Given Mr. Folks' need for time to review the draft, and because he cannot take notes on it or retain it, the defense team will need to make additional trips to take the draft PSR to him for his review. The facility where Mr. Folks is being held is two hours, one-way, from all three of defense counsels' offices; meeting with Mr. Folks requires nearly all day.

Further, the defense team has significant objections to the draft PSR, which it will have to review with Mr. Folks before they are submitted to U.S. Probation. For example, the draft PSR contains a considerable amount of information from unsworn witness interviews from witnesses

who testified under oath and were subject to cross-examination at trial. Thus, a good part of the objections will require locating witness testimony – which in some cases contradicts the information provided in the interviews contained in the draft PSR – and excerpting the relevant portions to highlight Mr. Folks’ objections. Defense counsel and Mr. Folks need additional time to complete this process.

Further, on January 7, 2020, counsel for the Government submitted a lengthy letter to U.S. Probation seeking multiple additional enhancements, some of which have never been applied in sex-trafficking cases in this Circuit. The defense also must review and respond to this additional material that the Government seeks to have included in the PSR.

The Government objects to this request.

The defense is seeking a limited continuance for the purpose of giving Mr. Folks and his counsel the time necessary to competently and completely review and submit comments to the draft PSR. Accordingly, Mr. Folks respectfully asks the Court to continue his sentencing hearing by 60 days, until March 3, 2020.

The defendant is also requesting an expedited decision since time is of the essence.

DATED at Burlington and Middlebury, Vermont this 10th day of January, 2020.

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